

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5377 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT and

MR.JUSTICE R.P.DHOLAKIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

NATVARLAL ISHVERLAL MEHTA

Versus

STATE OF GUJARAT

Appearance:

Appellant appeared as Party-in-person

Mr.L.R.Poojari, Addl. Govt. Pleader for respondent

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 14/08/98

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

The present appellant-original plaintiff has preferred this appeal against the judgment and order passed by the Civil Judge (Sr.Divn.), Ahmedabad (Rural), Mirzapur, Ahmedabad on 29-9-1997 dismissing the Special Civil Suit No.205 of 1993 filed by the appellant.

.RS 2

2. The short facts of the present appeal are as under:

The present appellant had joined as Malaria Supervisor in the State of Bombay in the year 1953. After bifurcation of the State of Bombay, the services of the plaintiff were got shifted to State of Gujarat and he was posted in the Industries Department as Junior Industries Inspector. According to the appellant, he was eligible for promotion to the post of Industries Officer with effect from 1-8-1966. He was also eligible for further promotions to the posts of Assistant Commissioner of Industries with effect from 28-2-1975, Deputy Commissioner of Industries with effect from 1-5-1978 and Joint Commissioner of Industries with effect from 22-3-1982. It is the further say of the appellant that the respondent in exercise of its arbitrary authority and with mala fide actions, denied the above promotions. Therefore, the appellant approached the High Court for the redressal of his grievance by way of a Writ Petition, viz. Special Civil Application No.2457 of 1980 wherein the High Court, by its judgment and order dated 14-10-1987 directed the respondent to give promotion to the appellant as Industries Officer with effect from 1-8-1966. The respondent, on the basis of the directions of the High Court, accorded all further promotions to the appellant, with effect from 1-8-1966, i.e. the date on which he was eligible for promotion to the post of Industries Officer with all consequential benefits. It is the further say of the appellant that if he would have been promoted on the above posts as and when it were due, he could have drawn the salaries on the promotional posts from the respective dates, but because of the arbitrary and mala fide actions on the part of respondent, he was not promoted in time. It is the further say of the appellant that the respondent was liable to pay interest for the period from 1-8-1966 to 30-11-1992, i.e. the period during which he was paid the difference of salary, had he been further promoted to the above posts with effect from 1-8-1966 and thereafter as because he got the above difference of salary only after October, 1987, and as a consequence, he suffered a loss of interest and therefore, he has prayed for the same @ 21% per annum.

3. The respondent-original defendant appeared in the Special Civil Suit before the trial Court and filed the written statement at exh.11 denying the contentions of the original plaintiff in toto. In short, the original defendant requested the Court to dismiss the suit with costs.

4. The trial Court framed the issues at exh.19. Thereafter, the parties produced their documentary evidences on record with separate lists. The original

plaintiff appeared in the Special Civil Suit and examined himself at exh.21 whereas on behalf of the defendant, Under Secretary, Industries and Mines, Sachivalaya, Gandhinagar was examined at exh.47. The plaintiff submitted his written arguments at exh.61. After hearing both the parties and on appreciation of documentary evidences, the trial Court dismissed the suit of the plaintiff on 29-9-1997 against which, the present appeal is preferred.

5. At the time of final hearing of the above appeal, the appellant appeared in person and filed his written arguments alongwith the purshis stating that he does not want to argue orally in the matter, and what is submitted in his written arguments is his complete submission.

6. We have carefully gone through the evidence which was suggested to be read by the appellant in his written argument and also heard learned Addl. Govt. Pleader on behalf of the respondent-State.

7. It is clear from the record and proceedings, the oral evidence of respective parties, and the High Court judgment and order dated 14-10-1987 that the plaintiff became entitled to promotion to the post of Industries Officer on a specific date. It is also clear that the respondent has granted all consequential benefits as directed by the High Court. Now it is the contention of the appellant that he is entitled to receive interest on the delayed payment of arrears of salary for the period from 1-8-1966 to 30-11-1992. He has claimed interest 21% and also interest on the interest amount. A statement to that effect was submitted by the present appellant in the trial Court which shows that interest is calculated for different periods on the arrears of salary paid to him.

8. It is to be noted that the present appellant could not point out any Rule or statutory provision in his written arguments, either before the trial Court or before this Court, on the basis of which interest can be claimed on the arrears of salary paid to an employee. It is only stated that he is entitled to interest, because he could not get promotions in time because of arbitrary and mala fide actions on the part of the respondent. Merely making the averments in the plaint of mala fide actions of the original defendant would not suffice in claiming the interest, but it has to be proved. The learned trial Judge has rightly held that appellant has failed to establish the alleged mala fide acts of the respondent.

9. Over and above, in the suit notice exh.47, the appellant has demanded the interest on the basis that the High Court has directed the respondent to grant all consequential and monetary benefits based on the deemed date of promotions. It is to be noted at this stage that the amount of interest is not mentioned in the judgment under the head of consequential benefits, and no speaking order regarding payment of interest passed by the High Court was shown to us. It also appears that interest, on account of delayed payment, was never claimed as one of the consequential benefits, before the High Court in the aforesaid Writ Petition.

10. The appellant has tried to establish his case by emphasizing that High Court has directed the respondent to pay all the consequential benefits to the appellant and therefore, he is entitled to interest on delayed payment. The trial Court has rightly rejected the plea of the appellant and we do not find any illegality in it. It was also contended by the appellant that in the judgment, the trial Court has not mentioned a single word about suit notice. Since suit notice is the basis of the plaint, no separate discussion is required in the judgment, unless found necessary. It is seen that the suit notice and the suit plaint is based only on the plaintiff's own interpretation of what the High Court meant by "consequential benefits" and ultimate prayer in the said notice is that if the respondent will not act as per the suit notice, the appellant will file contempt of court proceedings in the High Court against the respondent.

11. After going through the record and proceedings, it becomes clear that the appellant was paid all benefits as directed by the High Court. Even all pensionary benefits were paid to him. The appellant was not able to prove the alleged arbitrary and mala fide actions of the respondent. He relied upon a case reported in AIR 1991(2) GLH page 186. He submitted that he is entitled to interest as per the above settled law by this Court. It is to be noted that the trial Court has taken into consideration the above reported judgment, properly dealt with the same and came to a proper conclusion. We are in agreement with the decision taken by the trial Court.

12. In the result, the judgment and order passed by the Civil Judge (Sr.Divn.), Ahmedabad (Rural), Mirzapur on 29-9-1997 dismissing the Special Civil Suit No.205 of 1993 is hereby confirmed. The appeal is accordingly dismissed, with no order as to costs.

radhan/